

REMARKS

Claims 35, 37-40, 42-45, 47-50 and 52-64 are pending in the application.

Claims 35, 37-40, 42-45, 47-50 and 52-64 have been rejected.

No Claims have been amended, and reconsideration of the claims is respectfully requested in light of the following arguments and remarks.

I. REJECTIONS UNDER 35 U.S.C. § 103

Claims 35, 37-40, 42-45, 47-50, 52-57 and 59-64 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Szlam (US Patent No. 6,359,892) in view of Echols (US Patent No. 6,430,175). Claim 58 was rejected under 35 U.S.C. § 103(a) as being unpatentable over Szlam (US Patent No. 6,359,892) in view of Echols (US Patent No. 6,430,175) and further in view of Baker (US Patent No. 6,611,498). The rejections are respectfully traversed.

In *ex parte* examination of patent applications, the Patent Office bears the burden of establishing a *prima facie* case of obviousness. MPEP § 2142; *In re Fritch*, 972 F.2d 1260, 1262, 23 U.S.P.Q.2d 1780, 1783 (Fed. Cir. 1992). The initial burden of establishing a *prima facie* basis to deny patentability to a claimed invention is always upon the Patent Office. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Piasecki*, 745 F.2d 1468, 1472, 223 U.S.P.Q. 785, 788 (Fed. Cir. 1984). Only when a *prima facie* case of obviousness is established does the burden shift to the applicant to produce evidence of nonobviousness. MPEP § 2142; *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Rijckaert*, 9 F.3d 1531, 1532, 28 U.S.P.Q.2d 1955, 1956 (Fed. Cir. 1993). If the Patent Office does not produce a *prima facie* case of unpatentability, then without more the applicant is entitled to grant of a patent. *In re Oetiker*, 977 F.2d 1443, 1445, 24 U.S.P.Q.2d 1443, 1444 (Fed. Cir. 1992); *In re Grabiak*, 769 F.2d 729, 733, 226 U.S.P.Q. 870, 873 (Fed. Cir. 1985).

A *prima facie* case of obviousness is established when the teachings of the prior art itself suggest the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 U.S.P.Q.2d 1529, 1531 (Fed. Cir. 1993). To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the

references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. The teaching or suggestion to make the claimed invention and the reasonable expectation of success must both be found in the prior art, and not based on applicant's disclosure. MPEP § 2142. In making a rejection, the examiner is expected to make the factual determinations set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148 USPQ 459, 467 (1966), *viz.*, (1) the scope and content of the prior art; (2) the differences between the prior art and the claims at issue; and (3) the level of ordinary skill in the art. In addition to these factual determinations, the examiner must also provide "some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir 2006) (cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1741, 82 USPQ2d 1385, 1396 (2007)).

The Office Action concedes that Szlam fails to disclose or describe "providing a communication channel between the web application and the call server system and the web application accessed from a web server." See, Office Action, page 3. As best understood, it appears that the Office Action is identifying a multimedia application or browser application executing on the computer 221 or a web browser in the laptop (remote communications) device 10 as equivalent to Applicant's "web application." Office Action, page 2. Despite this, the Office Action appears to argue that the controller 225 translates commands from the web application to the call server system from a web application format into a call server system format (citing controller 225, col. 9, lines 46-60, col. 12, lines 45-57). Thus, it is not clear what component in Szlam the Office Action deems equivalent to the "wrapper" that performs the method of independent Claim 35 – as Szlam's multimedia or browsing application or web browser is not described as being both the web application and the wrapper (performing translations). From this, it appears the Office Action has not established a *prima facie* case that the elements it identifies are equivalent to the elements recited in the claims - as asserted in the Office Action.

Even assuming the Office Action is accurate in its asserted interpretation of the scope of Szlam (which Applicant respectfully submits is incorrect), the Office Action next argues that Echols teaches “providing a communication channel between the web application and the call server system” with “the web application accessed from a web server.” Office Action, page 3. Assuming the Office Action is equating Echols telephone switch 10 as Applicant’s recited call server system, Applicant respectfully submits the “operator work station 11” (or the BRI interface) connected to the switch is not a “web application.” It appears the Office Action is asserting that the operator work station 11, which is coupled between the telephone switch 10 and web server 21, provides a communication channel between a web application on the web server 21 and the telephone switch 10. While there exist communications between the web server 21 and the work station 11, and between the work station 11 and the web server 21, there does not appear to exist a web application at the web server 21 that provides web application commands to the work station 11, where they are translated by the work station 11 into a caller server system format. Echols appears to teach that number dialed or other number information is received and displayed at the operator station 11 through either the BRI connection (from switch 10) or through the intranet connection (from web server 21), the human operator initiates a request to web server 21, receives a form from web server 21, fills out the form with information about the caller, sends the form to web server 21, and receives information back which tells the human operator how the call is to be processed. Echols, Col. 2, lines 58 thru Col. 3, lines 23.

Combining Szlam with a reference that merely discloses some communications between three network devices provides no suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. First, Echols does not appear to relate to call control commands for a call server in a PBX. Second, there does not appear to be any translation of call control commands sent from the web application accessed by the web server 21 (whatever that web application may be) to the switch 10. Third, these two references even if combined, do not teach or suggest all the claim limitations (as noted by the foregoing, and as noted in the arguments with respect to Szlam, see above). Therefore, the proposed combination of Szlam and Echols fails to disclose, teach or

suggest all elements recited in independent Claim 35. The Office Action appears to use the same or similar reasoning to reject the other independent Claims. Accordingly, Applicant respectfully requests the Examiner withdraw the § 103(a) rejections of Claims 35, 37-40, 42-45, 47-50, 52-57 and 59-64. For the same reasons, the rejection of Claim 58 should also be withdrawn.

II. CONCLUSION

As a result of the foregoing, the Applicant asserts that the remaining Claims in the Application are in condition for allowance, and respectfully requests an early allowance of such Claims.

If any issues arise, or if the Examiner has any suggestions for expediting allowance of this Application, the Applicant respectfully invites the Examiner to contact the undersigned at the telephone number indicated below or at rmccutcheon@munckcarter.com.

The Commissioner is hereby authorized to charge any additional fees connected with this communication or credit any overpayment to Nortel Networks Deposit Account No. 14-1315.

Respectfully submitted,

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